

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-105

Filed: 1 August 2017

Davidson County, No. 14 JT 69

IN THE MATTER OF: B.M.C.H.

Appeal by Respondents-Parents from order entered 25 October 2016 by Judge Carlton Terry in Davidson County District Court. Heard in the Court of Appeals 11 July 2017.

*Assistant Davidson County Attorney Christopher M. Watford, for petitioner-appellee Davidson County Department of Social Services.*

*Reece & Reece, by Mary McCullers Reece, for respondent-appellant mother.*

*Wagner Family Law, by Lisa Anne Wagner, for respondent-appellant father.*

*Parker Poe Adams & Bernstein LLP, by Patricia T. Bartis, for Guardian ad Litem.*

HUNTER, JR., Robert, N., Judge.

Respondents, the mother and father of B.M.C.H. (“Bert”)<sup>1</sup>, appeal from an order terminating their parental rights. Respondent-Mother’s counsel filed a no-

---

<sup>1</sup> We use pseudonyms for Bert and his siblings to protect the identities of the juveniles and for ease of reading. See N.C. R. App. P. 3.1(b) (2016).

*Opinion of the Court*

merit brief, pursuant to North Carolina Rule of Appellate Procedure 3.1(d). Respondent-Father argues the court committed the following errors: (1) terminating his parental rights on the ground of neglect; (2) terminating his parental rights on the ground of failure to make reasonable progress; and (3) determining it was in Bert's best interests to terminate parental rights. We affirm.

**I. Factual and Procedural History**

On 2 May 2014, the Davidson County Department of Social Services ("DSS") filed petitions alleging Bert, along with his two siblings ("Roger" and "Samantha"), to be neglected and dependent juveniles. DSS alleged the juveniles lacked appropriate care and supervision based on: (1) Respondent-Father's incarceration for possession of a firearm by a felon; and (2) Respondent-Mother's pending warrants for her arrest on charges of cruelty to animals and she was preparing to turn herself in to the police. DSS asserted there were no appropriate relatives to care for Bert.

The petition also alleged the following narrative. On 17 December 2010, the court adjudicated the children as neglected juveniles due to the following: (1) Respondent-Mother's recent eviction from her home and refusal to stay in a shelter; (2) Respondent-Father's absence due to criminal convictions; (3) Respondent-Mother's failure to ensure the children attended school regularly; (4) Respondent-Mother allowing Samantha to engage in sexual activities with adults; and (5) Respondents-Parents allowing Roger to operate a vehicle while only eight years old.

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

Since the prior adjudication, the concerns leading to the adjudication of neglect continued to persist. DSS cited the following as examples: (1) the juvenile's excessive unexcused absenteeism from school; (2) leaving Samantha in the care of a man who sexually assaulted her; (3) allowing Samantha to engage in a relationship with an adult male she met on the internet, who was subsequently charged with statutory rape; (4) failure to ensure Roger received prescribed medication necessary to stabilize his behavior, resulting in Roger having severe behavioral issues; (5) Samantha having suicidal thoughts and Respondent-Mother's subsequent failure to seek out mental health services; (6) exposure to domestic violence; and (7) Respondent-Mother moving the children to twelve different residences in five years.

On 22 April 2014, social workers visited Respondent-Mother's home. The home evinced "a strong odor of animal feces and urine[,]" and social workers struggled to breathe inside the home. Clothing and "excessive" garbage lined the floors of the home. The home did not have any power. The social workers described the home as "well below minimal standards for habitation."

On 2 May 2014, DSS obtained non-secure custody of Bert. The court held an adjudication hearing on 9 July 2014. On 26 July 2014, the Department of Public Safety released Respondent-Father. In an order entered 31 July 2014, the court adjudicated Bert and his siblings as neglected juveniles, based on stipulations made

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

by both Respondents. On 29 October 2014, the court established a permanent plan for the juveniles as reunification.

The State released Respondent-Mother in March 2015. Both parents entered into case plans with DSS. Eventually, Respondent-Father made sufficient progress, and the court allowed multiple overnight visits with Bert and Roger, starting on 20 July 2015.

On 14 August 2015, DSS allowed the children to stay with Respondent-Father for five consecutive nights. Roger and Bert's foster mother brought the boys to Respondent-Father's home. Roger went in the home and immediately came out and asked Respondent-Father, "What is she doing here?" and "Does [the social worker] know?" Respondent-Father responded "no" but told the foster mother he "would handle it." Roger told his foster mother the lady inside was Respondent-Mother's friend from prison, who recently served fifteen years for murder. The foster mother informed DSS about the situation.

Sarah Ramirez, a social worker with DSS, called Respondent-Father and asked about the woman, Tammy, living in his home. Ramirez told Respondent-Father that Tammy needed to leave the home until DSS conducted a background check for Tammy. However, Respondent-Father "stated that [Tammy] had nowhere to go and would not be leaving his home." Ramirez ended the conversation and called a supervisor.

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

After speaking with her supervisor, Ramirez called Respondent-Father back and explained that Tammy could not stay in the home. Again, Respondent-Father explained Tammy “could not leave and that she had nowhere to go.” When Ramirez asked Respondent-Father about Tammy, he told Ramirez he met Tammy through Respondent-Mother. Respondent-Father and Tammy communicated through emails and phone calls “for nearly a year.” Respondent-Father considered Tammy “a good person” who “needed a break.” Ramirez told Respondent-Father either Tammy would need to leave his home or DSS would pick up the children. She also informed him he was “putting reunification with his children at risk[.]” Respondent-Father told Ramirez “to hurry up and get his children because they had already taken their nighttime medicine and were ready for bed.” Another DSS social worker removed Roger and Bert from the home.

On 17 August 2015, DSS and Respondents-Parents met to discuss the 14 August 2015 incident. Respondents-Parents believed DSS did not allow them to make decisions and that DSS would not approve of anyone in the home. Respondent-Father again stated “he thought he should be allowed to help [Tammy] gain a fresh start.” DSS “explained the concern was not over [Tammy] specifically, but over the entire decision making process.” DSS pointed to Respondents-Parents decision to move Tammy into the home and failing to inform DSS. Respondents-Parents “felt the Department would over react to the situation.”

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

At the meeting, DSS and Respondent-Father also discussed Respondent-Mother's decision-making skills. Respondent-Father said it was his decision to move Tammy into his home. DSS and Respondent-Father also discussed his prior denials of knowing who Tammy was. Respondents-Parents said they would move Tammy out of the home "if the Judge made them . . . but not until then."

Respondent-Father communicated "s[e]veral things he wanted for his children, including that they be safe, that they felt they were his priority, that they never suffer physical abuse, and that they get their education." DSS commended Respondent-Father for not abandoning his children and following the court's orders. However, DSS remained concerned about Respondent-Father's "lack of transparency and his ability to make good decisions to keep his children safe."

As a result, in an order entered 9 December 2015, the court changed the permanent plan for Bert to termination of parental rights and adoption. The court subsequently modified the plan to termination of parental rights and adoption, with a secondary plan of guardianship with a relative.

On 14 January 2016, and as amended on 15 September 2016, DSS filed a petition to terminate Respondents'-Parents' parental rights to Bert. On 22 September 2016, the court held a termination of parental rights hearing.

DSS first called Sarah Ramirez. Since 2014, Ramirez's case load included Bert's, and his siblings', case file. Although Respondent-Mother failed to progress in

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

her case plan, Respondent-Father initially “worked hard” towards reunification. However, Respondent-Father treated the case plan as a “checklist” and often went “through the motions[.]” Respondent-Father also blamed the instances of neglect on Respondent-Mother. DSS and Respondent-Father discussed “about how to protect the children from those decisions in the future . . . .”

On 1 August 2015, Respondent-Father “was on the verge of reunifying” with Bert and Roger. However, on 14 August 2015, an incident occurred during an unsupervised visit at Respondent-Father’s home. After learning of an unapproved person in Respondent-Father’s home, foster parents contacted DSS. DSS called Respondent-Father, who admitted Tammy moved into his home. DSS indicated Tammy needed to leave the home until DSS could conduct a background check. Respondent-Father refused to remove Tammy from his home because “she had no where to go either, she was on house arrest[,] and she would go back to prison if he kicked her out . . . .” DSS removed the children from Respondent-Father’s home.

The next week, Ramirez met with Respondent-Father.

[Ramirez] tried to get more information from him on how this plan came about and why he made the choices he did and just to make sure he understood the ramifications of his actions . . . and asked him again to have [Tammy] leave the home and asked him to make a different choice, and he stated he would not have her leave unless the Judge ordered him to have her leave.

*Opinion of the Court*

Since that conversation, Ramirez made it clear to Respondent-Father he “would need to prove at that point that he had better decision-making skills than what he had shown in August of 2015.” At the time of the hearing, Tammy still lived with Respondent-Father. Between August 2015 and the hearing on 22 September 2016, Respondent-Father did not ask Tammy to leave. Ramirez expressed concern regarding “the decision-making skills of both the parents . . . and their ability to provide safety for the children.” Ramirez clarified her concern and stated:

it’s not specifically that [Tammy] is living in the home, not [Tammy] specifically. It goes back to the decision that they made together to move her into the home and not be transparent about it with the Department, after the numerous meetings prior to August of 2015 about all the inappropriate people who had supervised the children in the past or the improper supervision the kids had had in the past.

For them to make that decision and move her into the home without consulting the Department and saying, “Can we do this? Is this allowed, how do we plan for this,” that was the concern, because we had addressed that over and over and over.

DSS rested, and Respondent-Father called Tammy to the stand. Tammy moved in with Respondent-Father on 9 August 2015. When she first moved in, Tammy and Respondent-Mother were in a relationship. However, the relationship “did not work.” At the time of the hearing, Tammy and Respondent-Father were in a relationship and lived together in Respondent-Father’s home. Respondent-Father

*Opinion of the Court*

never asked her to leave the home. Tammy was “off post supervision release” and could “live wherever [she] want[ed] to in the community . . . .”

On 25 October 2016, the court entered an order terminating Respondents-Parents’ parental rights to Bert pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) and (2) (failure to make reasonable progress) (2016). The court also determined it was in Bert’s best interests to terminate Respondents-Parents’ parental rights. Respondents-Parents gave timely notice of appeal.

**II. Standard of Proof**

“The standard of review in termination of parental rights cases is whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” *In re Shepard*, 162 N.C. App. 215, 221-22, 591 S.E.2d 1, 6 (2004) (quoting *In re Clark*, 72 N.C. App. 118, 124, 323 S.E.2d 754, 758 (1984)). We are bound by findings not challenged by Respondents-Parents on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) (citations omitted) (holding unchallenged findings are deemed supported by competent evidence and are binding on appeal). “We then consider, based on the grounds found for termination, whether the trial court abused its discretion in finding termination to be in the best interest of the child.” *Shepard*, 162 N.C. App. at 222, 591 S.E.2d at 6 (citation omitted). A discretionary decision will be disturbed only if it is manifestly unsupported by reason or so arbitrary that it could not have been the

result of a reasoned decision. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985) (citation omitted).

### **III. Analysis**

We review Respondents-Parents' contentions in two parts: (A) Respondent-Mother's appeal and (B) Respondent-Father's appeal.

#### **A. Respondent-Mother's Appeal**

Pursuant to North Carolina Rule of Appellate Procedure 3.1(d), Respondent-Mother's counsel filed a no-merit brief on her behalf. In the brief, Respondent-Mother's counsel states she made "a conscientious and thorough review of the record on appeal" and was unable to identify any issues of merit on which to base an argument for relief. Respondent-Mother's counsel requests this Court conduct an independent examination of the case. In accordance with Rule 3.1(d), counsel wrote Respondent-Mother advising her of counsel's inability to find reversible error, her filing of a "no-merit" brief, and of Respondent-Mother's right to file her own arguments directly with this Court. Respondent-Mother did not file her own written arguments.

After reviewing the transcript and record, we are unable to find any possible prejudicial error in the court's order terminating Respondent-Mother's parental rights. Our review of the record reveals Respondent-Mother entered into a case plan to address the issues leading to Bert's removal. However, at the time of the

termination hearing, the court found Respondent-Mother failed to: (1) complete mental health treatment; (2) maintain stable employment; or (3) maintain stable housing. Moreover, Respondent-Mother failed to take responsibility for the issues leading to Bert's removal from her care.

These findings, which were supported by clear, cogent, and convincing evidence, support the conclusion that Respondent-Mother: (1) willfully left Bert in foster care or placement outside the home for over twelve months; and (2) had not made reasonable progress under the circumstances to correct the conditions which led to Bert's removal from the home. *See* N.C. Gen. Stat. § 7B-1111(a)(2); *In re O.C.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005) (internal citations omitted). The finding of this statutory ground, alone, supports termination of Respondent-Mother's parental rights. *See In re Taylor*, 97 N.C. App. 57, 64, 387 S.E.2d 230, 233-34 (1990) (citation omitted) (holding a finding of any one of the separately enumerated grounds is sufficient to support termination). Furthermore, the court made appropriate findings in determining termination of Respondent-Mother's parental rights was in the juvenile's best interests. *See* N.C. Gen. Stat. § 7B-1110(a) (2016). Accordingly, we affirm the court's order terminating Respondent-Mother's parental rights.

**B. Respondent-Father's Appeal**

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

We address Respondent-Father's appeal in two parts: (i) the adjudication portion of the termination of parental rights order; and (ii) the best interests analysis of the termination of parental rights order.

i. Grounds to Terminate Respondent-Father's Parental Rights Under N.C. Gen. Stat. § 7B-1111(a)(1)

Respondent-Father argues the court erred by concluding grounds existed to terminate his parental rights. We disagree.

N.C. Gen. Stat. § 7B-101 defines a neglected juvenile as:

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

N.C. Gen. Stat. § 7B-101(15) (2016). Generally, "[i]n deciding whether a child is neglected for purposes of terminating parental rights, the dispositive question is the fitness of the parent to care for the child 'at the time of the termination proceeding.'" *In re L.O.K.*, 174 N.C. App. 426, 435, 621 S.E.2d 236, 242 (2005) (quoting *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984)). When, however, "a child has not been in the custody of the parent for a significant period of time prior to the termination hearing, 'requiring the petitioner in such circumstances to show that the child is currently neglected by the parent would make termination of parental rights impossible.'" *Id.* at 435, 621 S.E.2d at 242 (quoting *In re Shermer*, 156 N.C. App. 281,

*Opinion of the Court*

286, 576 S.E.2d 403, 407 (2003)). “In those circumstances, a trial court may find that grounds for termination exist upon a showing of a ‘history of neglect by the parent and the probability of a repetition of neglect.’” *Id.* at 435, 621 S.E.2d at 242.

The court made the following findings of fact:

68. [Respondent-Father’s] attitude and level of cooperation decreased once [Respondent-Mother] was released from prison.

69. On August 1, 2015, [Respondent-Father] was living at the [ ] address, still receiving disability, was not enrolled in therapy, and not participating in NA/AA. [Respondent-Father] was receiving unsupervised, overnight visitation[.]

70. Neither the Department nor the Guardian *ad litem* recommended unsupervised overnight visitation until [Respondent-Father] re-entered therapy and complied with the court orders for participation in an NA/AA-type program.

...

72. On August 14, 2015, social worker Ramirez received a phone call from the foster mother for [Roger and Bert]. The foster mother reported that when she took the children to [Respondent-Father’s] house for their overnight visit on that day there was a problem when she arrived. The foster mother reported that [Roger] went into the home and immediately came back out and confronted his father saying, “What is she still doing here?” and “Does Sarah know?” The foster mother said [Respondent-Father] stated no, but that he would handle it. The foster mother said [Roger] told her it was his mother’s friend from prison. [Roger] also told her that she was in prison for fifteen years for murder.

73. Social Worker Ramirez called [Respondent-Father]

*Opinion of the Court*

and asked him if in fact there was a woman living in his home and he stated that she was and her name was Tammy [ ]. This social worker told him that she needed to leave the home until the Department could complete a background check on her and [Respondent-Father] stated “well do it.” This social worker explained that due to the late hour that the background check could not be completed immediately and stated again [Tammy] would need to leave the home in the meantime so he could visit with his children.

74. [Respondent-Father] stated that [Tammy] had nowhere to go and would not be leaving his home. Social worker Ramirez reiterated that the children could not stay in the home until the Department could assess the situation and complete background checks on her. [Respondent-Father] again stated she could not leave the home. This social worker ended the conversation with [Respondent-Father] and sought direction from a supervisor.

75. Social Worker Ramirez called a supervisor[.] It was determined that the Department could not allow the children to remain visiting at [Respondent-Father’s] home with the current circumstances in that an unknown and unvetted person who allegedly committed homicide [was] in the home with the children.

76. Social Worker Ramirez called [Respondent-Father] back the same night and discussed with him further. She explained to [Respondent-Father] that [Tammy] could not remain in his home at that time. [Respondent-Father] again stated that she could not leave and that she had nowhere to go. He stated she was on house arrest. This social worker asked [Respondent-Father] how he met [Tammy] and how much he knew about her. He stated that he met her through [Respondent-Mother]. That [Respondent-Mother] had gotten to know her while she was in prison. He also stated that he had been communicating to [Tammy] via telephone and letters for nearly a year. He

*Opinion of the Court*

stated that she was a good person and needed a break. Social worker Ramirez explained that [Tammy] would need to leave his home at that time or the Department would need to pick up his children, and that he would be putting reunification with his children at risk. [Respondent-Father] told this social worker to “hurry up” and get his children because they had already taken their nighttime medicine and were ready for bed.

77. On August 17, 2015, Social worker Ramirez met with [Respondent-Parents] to discuss the situation. During the meeting, [Respondent-Father] stated again he thought he should be allowed to help [Tammy] gain a fresh start. The Department explained the concern was not over [Tammy] specifically, but over the entire decision making process. Starting with the respondents arranging to be [Tammy]’s home plan from prison to moving her in and never notifying the Department. The respondents both stated they did not notify the Department since they felt the Department would overreact to the situation. [Respondent-Father] stated that he did make this decision, that it was his decision to move [Tammy] into his home. This social worker reminded him of a conversation between them over a week ago in which . . . [Respondent-Father] denied knowing Tammy.

78. [Respondent-Parents] willingly invited [Tammy] into the [ ] home without the prior approval, consent, or knowledge of the Department.

...

80. [Respondent-Father] was aware that [Tammy] was incarcerated for second-degree murder.

81. [Respondent-Father] did not disclose the presence of [Tammy] whom he had allowed to assume full-time residence in his home that he intended to live in with the minor child. When visitations occurred in the home, [Tammy] would leave the home and go outside for the

*Opinion of the Court*

duration of the visit. The children knew [Tammy] was present in the home.

82. [Respondent-Father] willfully sent his children out of his home by not complying with the request of the Department for [Tammy] to leave. Instead of preferring his child, he preferred [Tammy] to stay in the home and advised the social worker to “hurry up” and get them . . . and they were subsequently returned to foster care.

83. On August 19, 2015, this issue was addressed by this Court and in its findings indicated its disapproval of [Respondent-Father’s] decision and that such a decision negatively affected the safety of the child such that this Court changed the plan of care and reverted visitations to supervised visitation.

84. However, it is clear that [Tammy] did not have to reside in the [Respondent-Father’s] home in order to comply with the terms of her post-release supervision, she could have resided in any location, including the local homeless shelter.

85. Over the next thirteen months, [Respondent-Father] never requested that [Tammy] leave the residence and she remains there today, apparently now in a relationship with [Respondent-Father] . . . .

86. Over the next thirteen months, [Respondent-Father] never expressed any regret for his decision and took no action whatsoever to change the situation, knowing that his lack of change resulted in fewer visitations and a change in the plan of care for the minor child.

87. [Respondent-Father] maintained a new opportunity, every single day, following the August 19, 2015 hearing to acknowledge his decision and make different arrangements for [Tammy] that would have demonstrated an improvement in his decision-making and show that reunification with [Bert] and his sibling was a priority.

*Opinion of the Court*

[Respondent-Father] had almost four hundred opportunities to do so, but never did.

...

89. On at least two occasions, [Respondent-Father] has rendered himself unavailable to provide care and supervision for the minor child by engaging in criminal conduct that led to his repeated incarceration. [Respondent-Father] has removed himself from the opportunity to parent the minor child by his actions and his course of conduct since August 2015.

90. This Court finds that [Respondent-Father] is presently neglecting the minor child by depriving the minor child of the parental love and affection that would come from a closer parent-child relationship. By choosing to allow [Tammy] to remain in the home and requesting the social worker to “hurry up and get them,” [Respondent-Father] did not place this minor child first. *By failing to acknowledge this, even after this Court entered an order changing the plan and ending unsupervised visitation, [Respondent-Father] kept making the same decision to put his child last. [Respondent-Father] continued to make this decision every day—at least three hundred and sixty times—with the understanding that such a decision made unsupervised visitation, let alone reunification, less likely.* Consequently, this Court finds that [Respondent-Father] is currently neglecting the minor child by making the decision to prefer another over his child and depriving [Bert] of love, affection, and familial contact that would be derived in a more meaningful relationship with his father.

91. This Court finds that [Bert] was adjudicated to be a neglected juvenile on January 12, 2011 and again, for a second time, on July 9, 2014 pursuant to G.S. § 7B-101(15) and that the [R]espondent[-Father] is presently neglecting the minor child [Bert] as has been set out hereinabove, and that in light of the fact that [Respondent-Father] has not prioritized the minor child’s return to his care, even up

*Opinion of the Court*

until today at the time of the termination hearing, this Court would ultimately find that there is, and would continue to be, a probable repetition of neglect in the event [Bert] were returned to the custody of [Respondent-Father].

(emphasis added)

Respondent-Father challenges several of the court's findings of fact. We are bound by those findings not challenged by Respondent-Father on appeal. *See Koufman*, 330 N.C. at 97, 408 S.E.2d at 731 (citations omitted). Moreover, we review only those findings necessary to support the court's determination that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent-Father's parental rights. *See In re T.M.*, 180 N.C. App. 539, 540, 638 S.E.2d 236, 240-41 (2006).

Respondent-Father challenges Finding of Fact Number 78 and contends DSS presented no competent evidence showing he invited Tammy into his home. We are not persuaded. Ramirez's testimony at the hearing shows Respondent-Father "had willingly engaged in the home plan with the prison officials for [Tammy] to move into his home[.]" Furthermore, the court found, and Respondent-Father did not challenge the finding on appeal, both Respondents-Parents arranged for Tammy to be moved into Respondent-Father's home and Respondent-Father stated "it was his decision." Whether Respondent-Father "invited" Tammy into his home is a distinction without a difference under these circumstances.

*Opinion of the Court*

Respondent-Father next challenges Findings of Fact Numbers 90 and 91 concerning the court's determination that Bert was presently neglected and/or there was a probability of repetition of neglect. Respondent-Father contends there was no evidence presented showing Tammy's presence in the household would have created an environment where Bert would not receive proper care, supervision, or discipline, or create an environment injurious to Bert's welfare. Respondent-Father, however, misapprehends the thrust of the court's finding concerning repetition of neglect.

The "concern" expressed by DSS, and as found by the court in Finding of Fact Number 77, "was not over [Tammy] specifically, *but over the entire decision making process.*" (emphasis added). Respondent-Father failed to challenge the court's finding of fact evincing he allowed an "unvetted person who allegedly committed homicide" to be in the home with Bert without notifying DSS and that he repeatedly chose to prioritize Tammy over Bert. The court's finding of repetition of neglect was not based on any neglectful environment caused by Tammy's presence, but instead: (1) how Tammy's presence exemplified Respondent-Father's poor decision-making; (2) his deprivation from Bert of his love, affection, and familial contact; and (3) his failure to make Bert a priority over the course of thirteen months, between the 19 August 2015 hearing and the 22 September 2016 hearing. Thus, we determine these challenged findings are supported by the evidence.

*Opinion of the Court*

We conclude the court's findings support the conclusion there would be a repetition of neglect, should Bert be returned to Respondent-Father's care. Accordingly, we hold grounds existed under N.C. Gen. Stat. § 7B-1111(a)(1) to terminate Respondent-Father's parental rights and affirm this portion of the court's order.<sup>2</sup>

ii. Best Interests Determination

Respondent-Father next argues the court abused its discretion when it determined termination of his parental rights was in Bert's best interests. We disagree.

After adjudication for termination, the court must determine whether terminating the parent's rights is in the juvenile's best interests by considering the following criteria:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.

---

<sup>2</sup> Respondent-Father additionally argues the court erred by concluding that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(2) to terminate his parental rights. However, because we conclude that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) to support the court's order, we need not address the remaining ground found by the court to support termination. *Taylor*, 97 N.C. App. at 64, 387 S.E.2d at 233-34 (citation omitted) (holding a finding of any one of the separately enumerated grounds is sufficient to support termination).

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a).

The court made the following findings of fact:

- a. The minor child [Bert] will turn nine years old today and has spent the last twenty-eight months in the foster care custody of the Department of Social Services, or approximately one quarter to one-third of his life. The minor child has been in placement with the current foster family for the past several months. The current foster home is the prospective adoptive placement set forth by the Department.
- b. There is a very high likelihood of adoption for the minor child in the event the court would terminate the parental rights of respondents. The current foster family has expressed a sincere desire to adopt [Bert] and his nephew, who is the son of [Bert's] eighteen year old sister. The current foster family has stated an unequivocal desire to adopt the minor child.
- c. The current permanent plan of care for the minor child is a plan of termination of parental rights and adoption and clearly terminating the parental rights of the respondents would further that permanent plan of care. Termination of parental rights has been the permanent plan for the minor child since August of 2015.
- d. The minor child [Bert] does maintain some kind of bond with the respondent/parents; however, it is not necessarily a healthy parent-child bond. [Bert] recognizes his parents and knows them as his parents. The respondents often visited jointly and [Bert] was noted as being left to himself while the respondents primarily interacted with the other

*Opinion of the Court*

children. While neither respondent necessarily engaged in inappropriate behavior directed toward [Bert], the GAL observed the respondents interacting with [Bert], albeit on a very limited basis. Recent visitations seemed to have a negative effect on [Bert] as he began to have unusual behaviors following those visits such as refusing to come inside, tantrums, and urinating on himself, in the bed, and in the corner of his room.

e. Conversely, there is a bond between the prospective adoptive parents and the minor child [Bert] that is strengthening. The foster home/prospective adoptive family is a positive environment and one wherein a child has adults who treat him as their child, acknowledging those moments where the child brings to light the child says [sic] that they are not his parents and dealing with those awkward conversations, and remaining committed to caring for that child. [Bert] is a child who is safe and happy in his current home.

f. The Guardian ad litem has observed much more loving interaction between [Bert] and the foster parents than with the [Respondents]. [Bert] has struggled with trusting adults, but as time progresses and he sees that the foster family will not let him down as other adults have and that trust is building. The foster parents have worked diligently with [Bert] to support his emotional well-being. [Bert] stated that “Outside is a safe place” and the full scope of trauma he may have endured is yet unknown and he requires therapy to help address those issues. When first arriving at the foster home, [Bert] would test the foster parents by behaviors. The foster parents have responded through structure, support, love and by helping to support [Bert’s] therapeutic process.

g. [Bert] has been in foster care nearly a third of his life and has been in three different homes during that period. His current foster home is committed to him and to providing him with permanence. The preference in any case is for a child to be raised in an intact family; yet, even

*Opinion of the Court*

today, conditions exist that would retain the minor child in foster care for even longer and delay permanence for the minor child because his parents did not put him first.

Respondent-Father does not challenge any of the court's dispositional findings, and, accordingly, they are binding on appeal. *Koufman*, 330 N.C. at 97, 408 S.E.2d at 731 (citations omitted). Respondent-Father concedes the court "considered each of the enumerated statutory criteria" in the order. However, Respondent-Father contends the court failed "to give adequate consideration to Bert's repeatedly and strongly expressed desire" to be reunited with Respondent-Father.

At the termination hearing, the court acknowledged Bert's repeated statements that he wished to return home. Furthermore, when considering the statutory factors, the court made the dispositional finding that Bert maintained "some kind of bond" with his parents. Thus, it is apparent the court did not ignore this statutory factor. We cannot say the court's ultimate conclusion is manifestly unsupported by reason. We, therefore, hold the court did not abuse its discretion when it concluded it was in Bert's best interest to terminate Respondent-Father's parental rights.

**IV. Conclusion**

For the reasons stated above, we affirm the court's order terminating both Respondents-Parents' parental rights.

AFFIRMED.

IN THE MATTER OF: B.M.C.H.

*Opinion of the Court*

Judges BRYANT and MURPHY concur.

Report per Rule 30(e).